

Sant Kumar Sahu and Others Vs State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: April 5, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 239, 482
Penal Code, 1860 (IPC) â€” Section 120B, 34, 409, 420, 467

Citation: (2006) 3 JCR 274

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Nilesh Kumar Agrawal, for the Appellant; APP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

All the four petitioner have preferred this petition u/s 482 of the Code of Criminal Procedure for setting aside the entire criminal proceedings including the order impugned dated 29.8.2003, passed in Cr. Rev. No. 9 of 2001 arising out of Dumri P.S. Case No. 51 of

1997, corresponding to G.R. Case No. 2 of 1998 as also setting aside the order impugned passed by the Judicial Magistrate, 1st class, Gumla on

25.1.2001 whereby the prayer of the petitioners was rejected.

2. It was alleged in the written complaint of the informant presented before the Officer-in-Charge of Dumri P.S that several accused persons

including the petitioners had not executed their work of construction done of various Check Dams properly which were authorized to them and,

accordingly, they defalcated the Government exchequer. On the basis of written report Dumri P.S. Case No. 51 of 1997 was instituted under

Sections 420, 467, 468, 471, 409, 120B/34 of the Indian Penal Code as against the eight named accused persons including the four petitioners.

3. Learned Counsel for the petitioners submitted that departmental proceedings as well as criminal prosecution were initiated against the petitioners

with the common witnesses. The petitioners were put under suspension contemplating departmental proceeding, but no charge could be proved in

the departmental enquiry. Recommendations were made by the Enquiry Officer concerned to exonerate the petitioners as contained in Annexure 2

series. The Enquiry Officer envisaged that it were not the petitioners rather the Senior Officers who were responsible for the alleged defalcation.

Meanwhile, police after Investigation submitted charge-sheet for the alleged offence and, accordingly, cognizance of the offence was taken by the

Court below. The petition of the petitioners u/s 239 of the Code of Criminal Procedure was rejected by the Court below on 25.1.2001 and on

being aggrieved when they preferred Cr. Rev. No. 9 of 2001, it was also rejected by the Sessions Judge, Gumia by the order impugned. The

allegations of the misconduct could not be established in the different departmental proceedings of the petitioners and, therefore, they were

exonerated from the charges.

4. Learned Counsel for the petitioners submitted that since the petitioners have been exonerated from the charges in the departmental proceeding,

continuation of criminal prosecution against them would be the abuse of the process of Court and as such, the prosecution is liable to be quashed.

The allegations against the petitioners were discussed in course of departmental enquiry and only the senior officials were held responsible for the

alleged misappropriation of public money, but unfortunately the cognizance of the offence has been taken also against the petitioners. Reliance has

been placed on a decision reported in P.S. Rajya Vs. State of Bihar, . . The Apex Court in P.S. Rajya v. State of Bihar propounded that ""the

standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the

departmental proceedings. In the instant case the charge in the departmental proceedings and in the criminal proceedings is one and the same. If

the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports

submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.

5. From perusal of the Annexure 2 series which are enquiry reports submitted by the enquiry officer with regard to the departmental proceedings

initiated against the petitioners, this Court finds that liabilities have been fixed upon the senior officers for making entry in the measurement book

and consequently withdrawal of the amount which were allotted for the construction of work in different projects. No doubt, it was reported that

the petitioners being the Jansewak had to ensure the proper utilization of the allotment. However, it was observed by the enquiry officer that

selection of site and preparation of estimate to obtain technical sanction were the duties of the Engineer and Technical Officers. The valuation of the

work done was assessed by the Assistant Engineer as well as Executive Engineer and it could not be expected from non-technical like Jansewak

employee to object upon the technical report of the Engineers and that they may report against them if at all there were irregularities in their

assessment and, therefore, it was held that the petitioners were in nowhere responsible for the alleged embezzlement of the public fund. The

observation made by the Enquiry Officer-cum-Sub-divisional Officer, Gumla in favour of the petitioners based upon discussion of evidence and

there appears merit in the present petition u/s 482 of the Code of Criminal Procedure.

6. In the result, this petition is allowed and criminal prosecution against the petitioners in Dumri PS. Case No. 51 of 1997, corresponding to G.R.

Case No. 2 of 1998, pending in the Court of Judicial Magistrate, 1st Class Gumla is quashed with consequential effect.